



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

zona, a statute was passed prohibiting large employers from employing less than a certain per cent native born citizens of the United States. The statute was declared invalid as denying to aliens the equal protection of the law. *Truax v. Raich*, 36 Sup. Ct. 7. Such a law, restricting the employment of aliens because they are a menace to the public welfare, can not be justified under the power of the state to make reasonable classifications in legislating to promote the public safety, health and welfare.¹² Broad and comprehensive as this power is, and though the Amendment is not designed to interfere with its operation, yet in all cases the exercise of the power must be reasonable and have some true relation to the public welfare. When it appears that this is not the effect of the law, it ceases to be an exercise of the police power, becomes arbitrary and unjust, and falls within the condemnation of the amendment. It is apparent that where the effect of a law is to deprive one of his right to labor for subsistence, it is not reasonable and can little subserve the public interest.

It has further been sought to justify laws directed against the employment of aliens by corporations under the power expressly reserved by the state to alter, amend or repeal the charters of corporations organized within the state. Though the extent of this power has never been exactly determined, yet it is well settled that when its exercise conflicts with the Federal Constitution, the former must give way to the superior authority. In determining this latter question neither the form of a statute, nor its declared purpose is looked to, but rather its operation and effect as enforced by the state.¹³

VALIDITY OF CONDITIONAL SALES AS TO PURCHASERS AND CREDITORS OF THE ORIGINAL VENDEE.—An agreement whereby the seller delivers goods to one who contracts to pay therefor on credit and whereby it is stipulated that title shall not pass until the price has been paid, is what is commonly known in the law as a conditional sale.¹ The majority of states, in the absence of statute, hold this form of contract not to violate any rule of law nor to be contrary to sound policy and the rights of the vendor are given full effect against bona fide purchasers from the buyer.² The payment of the

rights of man. Liberty is freedom from all restraints but such as are justly imposed by law. Beyond that line lies the domain of usurpation and tyranny. Property is everything which has an exchangeable value, and the right of property includes the power to dispose of it according to the will of the owner. Labor is property, and as such merits protection. The right to make it available is next in importance to the rights of life and liberty. It lies, to a large extent, at the foundation of most other forms of property.' *Slaughter-House Cases*, 16 Wall. 36, 127.

¹² *Butchers' Union v. Crescent City Co.*, 111 U. S. 746, 762; *Allgeyer v. Louisiana*, 165 U. S. 578.

¹³ *In re Parrott*, *supra*.

¹ *Williston, Sales*, § 324; *Mechem, Sales*, § 563.

² *Coggill v. Railroad Co.*, 3 Gray (Mass.) 545; *Call v. Seymore*, 40 Ohio St. 670; *Ballard v. Burgett*, 40 N. Y. 314; *Sumner v. Woods*, 67

purchase price is a condition precedent to the vesting of any title in the vendee and until this contingency arises he can pass no title to others; *nemo dat quod non habet*, so the creditor of or purchaser from the conditional vendee acquires no better title than the conditional vendee had.³ In several states, however, a different view of the policy of the law is entertained, and it is held that if the seller delivers the goods to the buyer so as to clothe him with the apparent ownership, a bona fide purchaser from the buyer or his execution creditor is entitled to protection against the claim of the seller.⁴ Legislative action has recognized this as sound policy and in many states statutes have been passed requiring conditional sales to be recorded in order to be effective as to third persons.⁵ These statutes are nearly all of the same tenor though some do not make recordation necessary in order that the vendor's title may prevail against creditors of the vendee.⁶ The reasons for this rule obviously apply with greater force in the case of creditors than of bona fide purchasers. In the case of the former the reliance has been generally upon the rights of the debtor; the apparent interest of the debtor in the particular property in possession under the conditional sale has not been looked to for payment to a greater degree than as a part of the debtor's estate it should justify. With respect to purchasers in good faith who have parted with their consideration, the reliance has been placed specifically upon the subject of the sale with reservation of title. An element of estoppel enters which does not operate in favor of creditors. In the case of the latter the personal liability of the vendee of the conditional sale, now seller, has not been concerned; it is only that ownership which the possession of the property has portended, which has been relied upon.

Even in those states where the validity of conditional sales is well settled, there seems to be a recognized exception where the goods are sold for the purpose of resale. The reason for the ruling that

Ala. 139, 42 Am. Rep. 104; Gill v. DeArmont, 90 Mich. 425, 51 N. W. 527; Rodgers v. Bachman, 109 Cal. 552, 42 Pac. 448. In Sumner v. Woods, *supra*, the court said: "It is a question of right and not notice, and the maxim *caveat emptor* applies with as much force as in the case of ordinary bailment."

³ In a few jurisdictions a so-called conditional sale is treated as a contract of sale with a mortgage back to the seller and the rules relative to chattel mortgages are applicable. Hervey v. R. I. Loco. Works, 93 U. S. 664; Hervey v. Dimond, 67 N. H. 342, 39 Atl. 331; Montenegro-Richm. Music Co. v. Beuris (Ky.), 169 S. W. 986.

⁴ VanDuzer v. Allen, 90 Ill. 499; Lincoln v. Quynn, 68 Md. 299, 11 Atl. 848; Ott v. Sweetman, 166 Pa. 217, 31 Atl. 102.

⁵ Lynn v. Broyles Furn. Co., 33 Ala. App. 634, 57 South. 122; McFarland Carriage Co. v. Wells, 99 Mo. App. 641, 74 S. W. 878; Thomas v. Cooksey, 130 N. C. 148, 41 S. E. 2; Wing v. Padgett (Tex.), 160 S. W. 422; John Deere Plow Co. v. Farmers Store Co., 154 Wis. 490, 143 N. W. 194.

⁶ See Matter of Remsen, 35 A. B. R. 195. The New York Statute requires recording only as against "subsequent purchasers" and the vendor's rights are prior to any creditor, without recording. § 62, art. 4. Pers. Prop. Law, N. Y.

secret reservation of title is void as against innocent purchasers thus reinforced makes this transaction, otherwise protected by most courts, generally against the policy of the law. So in this class of cases, where not only the possession, the indicia of ownership, but also authority to sell expressly or impliedly is given, the vendor is estopped to assert his title against bona fide purchasers who buy from the vendee in the regular course of business.⁷ In effect the vendor has waived the condition and is estopped to deny the waiver.⁸

Bona fide purchasers prevail however only in so far as this added reason of estoppel—that the vendor knew that in due course of business the subject of the sale was to be sold—justifies. Thus this exception is limited to bona fide purchasers and though they hold a chattel mortgage or other lien, which in the technical sense of the word makes them purchasers.⁹ Such was the holding in the recent case of *Mishawaka Woolen Mfg. Co. v. Stanton* (Mich.), 154 N. W. 48, in which the vendor sold goods under a conditional sales contract to a dealer in general merchandise for the purpose of replenishing his stock. It was held that the vendor's rights were superior to those of the vendee's creditors who held a chattel mortgage subsequently given to secure their claims. Similarly the exception does not apply to sales which are not in the regular course of business, as a sale in bulk or a bill of sale on the stock.¹⁰ For the original vendor could not have contemplated a sale of this nature and he is not estopped to assert that authority for such a transaction may not be attributed to him.

⁷ *Trousdale v. Winona Wagon Co.*, 25 Ida. 130, 137 Pac. 372; *O'Conto Land Co. v. Walschlaeger*, 155 Wis. 418, 144 N. W. 978; *Albert v. Steiner Mfg. Co.*, 42 Misc. 522, 86 N. Y. Supp. 162; *Columbus Buggy Co. v. Turley*, 73 Miss. 529, 19 South. 232; *Lowenberg v. Hayes*, 91 Me. 104, 39 Atl. 469; *Winchester Wagon Co. v. Carmen*, 109 Ind. 31, 9 N. E. 707.

⁸ The doctrine of implied waiver of the condition also applies generally to the conditional sale of personalty which is to become a fixture to realty. In these cases the mortgagee of the real property to which the personalty has become a real fixture prevails over the conditional vendor. *Triumph Elec. Co. v. Patterson*, 211 Fed. 244; *Puzzle Mining & Red. Co. v. Morse, etc., Co.*, 24 Col. App. 74, 131 Pac. 791.

⁹ *Flint Wagon Works v. Maloney*, 3 Boyce (Del.) 137, 81 Atl. 502; *Lewis v. McCabe*, 49 Conn. 140, 44 Am. Rep. 217; *Andre v. Murray*, 179 Ind. 576, 101 N. E. 81; *Triplett v. Mansur, etc., Co.*, 68 Ark. 230, 57 S. W. 261; *Weaver v. Borden*, 49 N. Y. 286.

¹⁰ *Hench v. Eacock*, 21 Ind. App. 444, 52 N. E. 85; *Burbank v. Crooker*, 7 Gray (Mass.) 158, 66 Am. Dec. 470; *Pratt v. Burhans*, 84 Mich. 487, 47 N. W. 1064.